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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 7th December 2007

No. 13189—li/1(J)-28/2005-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th August 2007 in Industrial Dispute Case No. 3/2007 of the Presiding Officer, Labour Court, Jeypore to whom the industrial disputes between the District Manager, Orissa State Civil Supplies Corporation Ltd., Rayagada and its workman Shri Simadri Das was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, JEYPORE, KORAPUT
INDUSTRIAL DISPUTE CASE NO. 3/2007
Dated the 16th August 2007

Present :

Shri G. K. Mishra, O.S.J.S. (Jr. Branch)
Presiding Officer, Labour Court,
Jeypore, District Koraput.

Between :

The District Manager, .. First Party—Management
Orissa State Civil Supplies
Corporation Ltd., Rayagada,
At/P.O./Dist. Rayagada.

Versus

Its Workman .. Second Party—Workman
Shri Simadri Das
At Raniguda Farm, Panchabati Street,
P.O./Dist. Rayagada.

Under Sections 10 and 12 of the Industrial Disputes Act, 1947..

Appearances :

For the Management	.. Shri Pradeep Kumar Sadangi A/R of the Management.
For the Workman	.. Self
Date of Argument	.. 16-8-2007
Date of Award	.. 16-8-2007

The Government of Orissa in the Labour & Employment Department in exercise of the powers conferred upon them under sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following disputes vide their Order No. 11349 (4), dated the 23rd December 2006 for adjudication of the following dispute :—

SCHEDULE

“Whether the refusal of employment to Shri Simadri Das, Ex-Additional Kantawalla-cum-Helper with effect from the 18th June 2001 by the District Manager, Orissa State Civil Supplies Corporation Ltd., Rayagada is legal and/or justified ? If not, what relief the workman is entitled to ? “

2. This case has been originated out of the reference submitted by the Government for the determination of the justifiability of the termination effected in respect of the workman Shri Simadri Das by the act of the management coupled with the relief to be awarded in his favour.

3. The workman contended in support of the case regarding the illegality committed in terminating him from the service without giving any notice in compliance to the mandatory provision enumerated u/s 25-C of the I. D. Act although the service was rendered for more than 240 working days in a year preceding to the termination. The management in counter acting the plea entertain by the workman assorted emphatically regarding the justifiability of the termination of the workman who was found surplus to be engaged consequent upon the cessation of the mobile retail shop unit and compliance being not necessary to be effected in case of workman serving on daily wages.

4. It is undisputed fact that the workman Shri Simadri Das was engaged as Additional Kantawala on the 19th April 1991 to work in the mobile van unit and subsequently was elevated to the post of Kantawala being attached to SCSO, Rayagada who has been working till the termination as such without any displeasure being incurred from the authority. The termination as alleged to have been effected was outcome of he being considered as the surplus staff. The Managing Director taking into consideration economics stringency experienced by the department ordered to eliminate all the surplus workers in respect of which the workman, Simadri Das became the victim of the situation. The act of the Managing

Director though laudable but, seems to be hasty without complying the plusable norm required under the principles of natural justice. The engagement of daily workers with daily wages though originally construed termination on the expiry of the closing day still the interest of the workman of such nature is protected under the Act, if he has served in the establishment continuously for period more than 240 days preceding such termination. It is the obligation of the management in conveying the continuous service rendered most provide opportunity to the workman to have say in the matter of termination. The action of the management to dis-engage the workman, Simadri Das along with the other surplus staffs was not based on the consideration of their continuous of service as reveals from the documents submitted by the management. By the termination so effected on the 18th June 2001 Simadri Das was shown to be working under SCSO, Rayagada and the order of the termination was also not communicated either to him or to his immediate superior under whom he was working for which Simadri Das was in continuous service under the SCSO, Rayagada till October, 2002. His absentee statement was also forwarded to the Head Officer to the management showing his continuity in service, which was the knowledge of the management, as evidence from the report of the District Manager, OSCSC Ltd., Rayagada vide Letter No., dated the 18th August 2003. Even though salary was stopped consequent upon the termination, no salary was received by the workman for his work done till October, 2002 under the control of SCSO, who was still ignorant about the termination of the workman. The information regarding termination was communicated to the SCSO, Rayagada after October, 2002. Without any order or otherwise to make it any valid effect. As per Industrial Disputes Act irrespective any workers natural justice is to be followed for retrenchment or termination as case may be whatever the cause may be except punishment is awarded by any management. No discrimination has been imported to in the said definition in respect of any workers whether daily wages workers, casual labourers, N. M. Rs., D. L. Rs., etc. It is imperative on the part of the management to issue notice before termination giving an opportunity to the workman to say on it or to pay given notice pay or compensation as deemed proper. The abrupt termination from the service with back date effect prejudising the continuity of service as admitted is considered to be violate to the norms establish under the I. D. Act. Whatever may be intention for effecting the statutory purpose may be immaterial but simultaneously interest of the workman must be protected and right accrued to him is to be safeguarded. The Act has been enacted in order to prevent exploitation of the workman by the management. In the instant case the management has not assiduous about the implication of the provision when passing an order of termination directly affecting the interest of the workman.

5. Availability of different post under the management appears to have been highlighted by the Divisional Manager of the establishment who appears to have recommended the engagement of the surplus workers in the vacant post but unfortunately , the Managing Director turned down the recommendation for re-engagement. In presence of otherwise post available the termination on the plea of surplus strength can easily to be accepted and taken into consideration. The workman could have been adjusted in any post lying vacant as reported by the District Manager. The non-acceptance of recommendation by the M. D. and became bent upon to effect termination is considered to be acuted with *mala fide* intention in order to deprived the right of the workman from having the employment to the meet the livelihood

which is the fundamental right of the every workman. A balance is to be strike out by the authority taking the condition of the workman of his livelihood due to the passage of age and the availability of the post for the sake of exercising right, the authority should not take any hasty step which would be adversely affect the interest of the workman by not giving any scope for re-employment in the fact of availability of the post and not giving opportunity of being heard on the matter of termination, the authority has committed gross injustice in violation of the particular law which may be considered has fraudulent tread practices in favour of the workman deliberately depriving the right of the workman. The cumulative effect of the above analysis becomes inevitable that, the termination effected on Shri Simadri Das by the act of the management is purely illegal and unjustified. Being completely erroneous, accordingly the issue is answered.

6. As a matter of fact, the illegality of termination is generally paved the way for accruing the right in favour of the workman for reinstatement and back wages. In the instant case the management has already re-engage Shri Simadri Das against the vacant post w.e.f. the 3rd August 2007 in his establishment and the workman in accepting such engagement has relinquished his claim of back wages for his future interest. The relief to have been passed has automatically been received by the workman with positive and negative effect. Accordingly, no relief is required to be passed under above circumstances.

ORDER

7. Accordingly, the Award is passed on contest.

Dictated and corrected by me.

G. K. MISHRA
16-8-2007
Presiding Officer
Labour Court, Jeypore
Dist. Koraput

G. K. MISHRA
16-8-2007
Presiding Officer
Labour Court, Jeypore
Dist. Koraput

By order of the Governor
P. MALLICK
Under-Secretary to Government